

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOYCE DENISE HICKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56988

**FILED**

JUL 13 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Anderson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying post-conviction petitions for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

July 22, 2010 Post-Conviction Petition for a Writ of Habeas Corpus

In her petition, appellant claimed that she received ineffective assistance of trial counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that her counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the results of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons,

<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). In order to prove prejudice sufficient to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that she would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

First, appellant claimed that her trial counsel was ineffective for failing to fully explain the consequences of her 2010 guilty plea agreement to her, in particular the habitual criminal provisions. Appellant failed to demonstrate that her counsel's performance was deficient or that she was prejudiced. In exchange for pleading guilty to one count of larceny from the person, the parties agreed to small habitual criminal treatment and dismissal of three other district court cases. The written 2010 guilty plea agreement informed appellant of the habitual criminal term of the plea negotiations and the potential penalties faced if she were adjudicated a small habitual criminal. Appellant was personally canvassed about the habitual criminal provisions during the April 28, 2010 plea canvass. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that her trial counsel was ineffective for coercing her guilty plea by promises, for failing to answer questions she had regarding the guilty plea, for failing to file a motion to suppress the evidence, for failing to conduct a meaningful investigation, for failing to explore appellant's competence because she had had brain surgery, and for failing to object to prosecutorial misconduct. Appellant failed to support these claims with sufficient specific facts, and thus, she

failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Therefore, we conclude that the district court did not err in denying these claims.

Third, appellant claimed that her trial counsel was ineffective for failing to object to her adjudication as a habitual criminal because two of the priors should have counted only as one prior conviction and because she did not receive proper notice of the habitual criminal proceedings. Appellant failed to provide any specific argument in support of her claim that the prior convictions were miscounted. Appellant received adequate notice prior to the proceedings that the State was seeking habitual criminal adjudication. In light of the benefit she received by entry of her guilty plea, she failed to demonstrate that she was prejudiced. Therefore, we conclude that the district court did not err in denying these claims.

To the extent that appellant claimed that trial counsel was ineffective in the proceedings involving her first judgment of conviction, appellant failed to demonstrate by a reasonable probability that she would not have entered into the second plea negotiations and would have insisted on going to trial. Therefore, we conclude that the district court did not err in denying these claims.

Next, appellant claimed that her guilty plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

Appellant claimed that her plea was unknowing and involuntary because she was not personally canvassed regarding the habitual criminal term of the plea negotiations, the elements, or the factual basis for her guilty plea. Appellant failed to carry her burden of demonstrating that her plea was invalid. Appellant was thoroughly advised of the consequences of her plea and the elements of the offense in her written guilty plea agreement and was personally canvassed about the potential penalties and the factual basis for the plea. Therefore, we conclude that the district court did not err in denying these claims.

Finally, appellant raised the following claims challenging her conviction: (1) the district court erred in adjudicating appellant a habitual criminal because she had not received notice of habitual criminal adjudication, the priors were stale and nonviolent, an adequate number of priors had not been presented, the district court failed to make a just and proper determination, and the determination was not made by a jury; (2) insufficient evidence supported a felony conviction; (3) she was not read her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966); (4) the State violated the plea agreement by addressing her criminal history at the first sentencing hearing; and (5) her sentence was allegedly illegal. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). Therefore, we conclude that the district court did not err in denying these claims.


September 7, 2010 Post-Conviction Petition for a Writ of Habeas Corpus

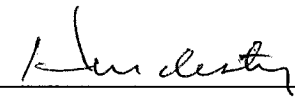
Appellant's petition was an abuse of the writ, and procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.810(2), (3). Appellant offered no explanation for why her claim could

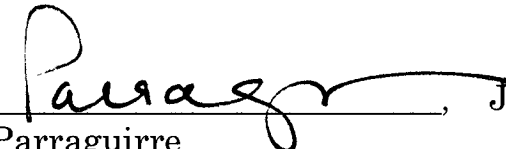
not have been litigated in the first post-conviction proceedings. Therefore, we conclude that the district court did not err in denying the petition as procedurally barred.

Accordingly, we

ORDER the judgments of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Linda Marie Bell, District Judge  
Joyce Denise Hicks  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.